HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.1602 OF 2007

Between:

Mohammed Abdul Khadeer and another

…Petitioners

AND

Municipal Corporation of Hyderabad,
Rep., by its Commissioner, Tank Bund,
Hyderabad and two others

...Respondents

: O R D E R :

Counsel for the petitioners : Shri V. Venkataramana

Counsel for respondent Nos.1 and 2 : Special Government Pleader

12th February, 2007

Per G.S.SINGHVI, CJ

In this petition, the petitioners have prayed for quashing notices dated 20-12-2006 and 23-1-2007 issued by Commissioner, Municipal Corporation of Hyderabad under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act') for demolition of the illegal construction made by them in premises bearing No.8-2-403/A/1/A situated at Road No.1, Banjara Hills, Hyderabad.

On 31-1-2007, the Court passed the following order:

"Shri V. Venkataramana for the petitioners.

Shri V. Venkataramana, learned counsel for the petitioners assailed notice dated 20-12-2006 issued by Commissioner, Municipal Corporation of Hyderabad mainly on the ground that the same is vague. He submitted that even though his clients had, vide their representation dated 27-12-2006, made a request for local inspection, respondent No.2, Assistant City Planner, Circle V, Municipal Corporation of Hyderabad did not order for local inspection and issued notice dated 23-01-2007 under Section 636 of Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') necessitating filing of the writ petition.

From the record of the case, we find that the petitioners had challenged the proceedings initiated by the competent authority of the Municipal Corporation of Hyderabad on 17-06-2002 for demolition of the illegal construction made by them by issuing notice under Section 452 of the Act. At that stage, they succeeded in persuading the trial Court to pass an order of injunction against demolition and by abusing the order of injunction, they continued illegal construction till 2003. To the misfortune of the petitioners, the civil court dismissed the suit on 23-01-2006 and the judgment of the trial court has become final, because no appeal is shown to have been filed against the same.

Although the concerned authorities of the Corporation should have, immediately after dismissal of the suit, taken

steps for demolition of the illegal construction made in violation of the sanctioned plan, they slept over the matter till 20-12-2006 when notice under Section 452 of the Act was issued. The petitioners have filed another suit for injunction which stands registered as O.S No.6511 of 2006, but they failed to persuade VI Junior Civil Judge, City Civil Court, Hyderabad to pass an order of injunction and this is the reason why they have invoked the jurisdiction of the High Court under Article 226 of the Constitution in the guise of challenging final notice dated 23-01-2007 issued under Section 636 of the Act.

In our opinion, the petitioners, who appear to have taken law into their hands and raised illegal constructions in violation of the sanctioned plan are not entitled to be heard under Article 226 of the Constitution of India, more so, because the suit filed by them is pending in the civil court. We would have dismissed the writ petition today itself with exemplary costs, but keeping in view the fact that the officers and authorities of the Municipal Corporation appear to be hand in glove with the petitioners which facilitated continuance of illegal construction by them and who failed to take action for almost one year even after the dismissal of the suit, we deem it proper to adjourn the matter to
05-02-2007 with the direction to Smt. G. Jyothi Kiran, learned counsel appearing for respondent Nos. 1 and 2 to file a detailed affidavit of Commissioner of Municipal Corporation of Hyderabad indicating therein as to why the officers of the Corporation did not take action for demolition of the illegal construction raised by the petitioners despite the fact that they were fully cognizant of the dismissal of the suit filed by the petitioners. If satisfactory explanation is not forthcoming, the Court may have to draw an inference that the authorities and the officers of the Corporation have, with malice animus, encouraged illegal constructions in the twin cities of Hyderabad and Secunderabad."

On 5-2-2007, the Court, after considering the affidavit of the Commissioner of Municipal Corporation of Hyderabad, passed the following order:

"Sri P.Venkataramana for Sri V.Venkataramana for the petitioners.

Smt. G.Jyothi Kiran for respondent Nos.1 and 2.

We have gone through the affidavit of Commissioner of Municipal Corporation of Hyderabad and are constrained to remark that the averments contained therein are not only vague to the core, but to some extent misleading.

The assertion contained in paragraph 2 of the affidavit of the Commissioner that by an order dated 21-12-2005 passed in Writ Appeal No.2130 of 2005, this Court had directed the Chief Judge, City Civil Court to dispose of all the suits pending against Municipal Corporation of Hyderabad within 60 days, is ex facie incorrect because there does not exist such direction.

The affidavit is silent about the total number of cases disposed of by the concerned civil courts as on 23-1-2006 when the suit filed by the petitioners was dismissed. Equally incorrect is the assertion that the deviations made by the petitioners were of minor nature. Notice dated 23-1-2007 which the Municipal Corporation was compelled to issue in the wake of representation made by a private individual shows that the deviations made by the petitioners are of serious nature.

Let the Commissioner file better affidavit within seven days from today.

Put up on 12-2-2007."

In compliance of the aforementioned direction, learned Special Government Pleader has filed affidavit dated 12-2-2007 of Sri Sanjay Jaju, Commissioner, Municipal Corporation of Hyderabad.

We have gone through the last mentioned affidavit and are satisfied with action taken against the officers/officials who failed to implement the provisions of the 1955 Act for demolition of the illegal construction.

Shri V. Venkataramana, learned counsel for the petitioners says that his clients have instructed him to withdraw the writ petition.

Since the request for withdrawal of the writ petition has been made at the threshold, we accept the same and dismiss the writ petition.

As a sequel to dismissal of the writ petition, WPMP.No. 2036 of 2007 filed by the petitioners is also dismissed and interim order

dated 29-1-2007 is vacated.

While dismissing the writ petition as withdrawn, we make it clear that neither any functionary of the Municipal Corporation of Hyderabad nor any administrative authority of the State or public representative should make any attempt to stall or stultify the action initiated by Municipal Corporation of Hyderabad for demolition of the illegal construction made by the petitioners and no civil court in the cities of Hyderabad, Secunderabad and Ranga Reddy shall pass any order of injunction in the matter without giving reasonable opportunity to Municipal Corporation of Hyderabad and by ignoring the fact that the earlier suit filed by the petitioners was dismissed by the trial Court on 23-1-2006 and no appeal was preferred against the said judgment and decree.

A copy of this order be forwarded to the Chief Judges of City Civil Courts of Hyderabad and Secunderabad and Principal District Judge, Ranga Reddy. The concerned Chief Judges and Principal District Judge should send xerox copies of the order to the courts which are dealing with the cases arising out of the action initiated by Municipal Corporation of Hyderabad against demolition of illegal and unauthorised constructions.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

12th February, 2007

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